

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON FINANCE AND CLAIMS

Call to Order: By **CHAIRMAN TOM ZOOK**, on April 10, 2003 at 8:00 A.M., in Room 317 Capitol.

ROLL CALL

Members Present:

Sen. Tom Zook, Chairman (R)
Sen. Bill Tash, Vice Chairman (R)
Sen. Keith Bales (R)
Sen. Gregory D. Barkus (R)
Sen. Edward Butcher (R)
Sen. John Cobb (R)
Sen. Mike Cooney (D)
Sen. John Esp (R)
Sen. Royal Johnson (R)
Sen. Bob Keenan (R)
Sen. Rick Laible (R)
Sen. Bea McCarthy (D)
Sen. Linda Nelson (D)
Sen. Trudi Schmidt (D)
Sen. Debbie Shea (D)
Sen. Corey Stapleton (R)
Sen. Emily Stonington (D)
Sen. Jon Tester (D)
Sen. Joseph (Joe) Tropila (D)

Members Excused: None.

Members Absent: None.

Staff Present: Prudence Gildroy, Committee Secretary
Taryn Purdy, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 727, 3/29/2003; HB 705,
3/28/2003; HB 743, 3/28/2003; SB
491, 4/4/2003

Executive Action: HB 363; HB 360; HB 13; HB 42

HEARING ON HB 727

Sponsor: EDITH CLARK, HD 88, Sweetgrass

Proponents: Joe Mathews, Department of Public Health and Human Services
Wally Melcher, Montana Association for Independent and Disability Services
SEN. JOHN COBB, SD 25, Augusta
Chris Volinkaty, Developmentally Disabled Kids and Families
Sylvia Danforth, Glendive
Jani McCall, Montana Association of Independent Disability Services

Opponents: REP. RALPH LENHARDT, HD 2, Glendive

Opening Statement by Sponsor:

EDITH CLARK, HD 88, Sweetgrass, opened on HB 727, a bill to close Eastmont Human Services Center. She directed the committee to note the "whereas" section of HB 727. She wanted the record to reflect the respect they hold for the Eastmont Center residents, the staff, and the community of Glendive. She said this is a very difficult choice. She explained the facts related to HB 727. Residents will continue to receive good care, and employees have options of early retirement with severance packages, new training opportunities, a six-month state health insurance package, and job opportunities in Glendive. A new group home will open in Glendive in November or December. There is a strong possibility of another mental health related business being started. There will also be 15-20 jobs, with relocation dollars available, at the Montana Developmental Center in Boulder. She submitted information sheets that explain the logistics of resident movement and some economic facts. EXHIBIT(fcs77a01) There is also information about a lawsuit which has had an impact on the closure decision, and information about the federal Olmstead that also has an impact.

Proponents' Testimony:

Joe Mathews, Department of Public Health and Human Services, rose in support of the bill. He noted Director Gail Gray was unable to be there, and he was speaking for her as well. This is a very difficult thing for the department to do, just as it was for the subcommittee to craft the committee bill now before them. He

emphasized the services they provide both at **Eastmont Human Services Center** in Glendive, and at the **Montana Developmental Center** are quality services provided by dedicated, competent staff. The reasons they support the bill deal with history, budget, litigation, and timing. The de-institutionalization movement began in the 1970s. Montana has been a leading state in trying to move people who are in residential facilities into integrated settings and community-based services. Montana was among the very first states to create a waiver to use Medicaid dollars to serve people in the community. He noted many states legislatures are looking at how much residential service capacity states must have versus how many people can be served in the community, and the continual movement toward community based services. In Montana, adults are committed to institutions by the courts. Re-commitments are looked at every year. In Montana, the commitments are all going to Boulder. The reason for that is the difference in population of the two facilities. People in the institutions need total or near-total care. These are people with developmental disabilities that need help with activities in daily living. They also work with folks who are medically fragile, those with behavior problems, and those of a predatory nature who need structured services. He referred to *Travis D. v. State*. It was a class action lawsuit filed by the Montana Advocacy Program. The lawsuit has been ongoing since 1996, and is scheduled for trial later this year. The state has been working to mediate that lawsuit and get a settlement. A decision by the United States Supreme Court, the *Olmstead* decision, was about the segregation of people with disabilities. The ruling was states must have comprehensive and effective working plans to move people treatment professionals believe could or should be served in community settings, etc. At one time there were over 1000 people at the **Montana Developmental Center** in Boulder. The subcommittee requested the department work on a plan to move some of the individuals into community settings, and to see if there was a way to consolidate residential facilities. He proceeded to outline the plan. **HB 2** does not include the additional \$2 million a year to keep **Eastmont** open. Closing **Eastmont** yields \$2 million for the 2005 biennium, and over \$4 million for the 2007 biennium. In the first year, they would be moving folks and would have a severance package for employees. Advocates believe great services are being provided in Montana, but want it done in a faster way than the state has been able to do it. The cost of the litigation has been significant. For outside counsel, the cost has been \$260,000 plus staff time over six years. In the first biennium when the lawsuit came, the legislature funded the cost for defending the lawsuit, but since that time the department had to make it up within their own budgets. The Montana Advocacy Program said the closure of this facility would go a long way

towards settlement, but have not said this would settle the case. The department plans to go into mediation in the fall. The department believes the time is right to coordinate residential services in one place, and move ten more people to the community. In addition to 18 people they have moved over the last year, that will be 28 people from a residential facility that have moved into the community. That is about a fourth of the residential facility population, so they are demonstrating progress. They believe the decision needs to be made while the legislature is in session. They also believe this will happen anyway, at some point in time. They are committed to the best possible transition for the staff and clients. There is an opportunity for a chemical dependency program to come in. They have worked on the option of developing two four-person group homes in Glendive that would take some of the folks in **Eastmont**. The private contractor AWARE is also coming into Glendive with group homes. If the courts make the decision, a master will determine which clients should move to the community. At that point in time, they would be under the gun to move those folks within a short period of time without developing a good plan, like they believe they have currently.

Wally Melcher, Montana Association for Independent and Disability Services, distributed a fact sheet. **EXHIBIT(fcs77a02)** They have appeared before the legislature numerous times in previous sessions as strong advocates for de-institutionalization. There has been discussion about the cost of institution services versus services in the community. Generally, services in the community have been less expensive. He emphasized it is the right thing for people to have the opportunity to live in the community. The subcommittee did an outstanding job of reviewing the budget for the **Department of Public Health and Human Services**. They made an effort to preserve as many services for those most in need as possible. One of the actions they took was this committee bill that would close **Eastmont**. He indicated this moves the Association closer to one of their long term objectives--to see the institutions close. In reality, this is a budget balancing issue and is one of the things the subcommittee did to try to offset the unspecified cuts. He referred to the fact sheet (Exhibit 2), and encouraged support for the bill.

{Tape: 1; Side: B}

SEN. JOHN COBB, SD 25, Augusta, advised the courts are ordering de-institutionalization. There are only 29 residents at **Eastmont** currently. The state will eventually close it anyway, and the committee thought if they were going to close it, it should be done now, while at the same time putting something back into the community. The community has done a good job of defending

Eastmont, but the courts are mandating deinstitutionalization. He felt this is the time to do it, when the legislature can try to save the economy in Glendive. If it is not done now, it will eventually close by itself, and the economy of Glendive will receive nothing in return.

Chris Volinkaty, Developmentally Disabled Kids and Families, advised the bill was not a bill brought by private providers, it was a bill developed by the department. This has been on the provider's agenda for years. They had hoped the money generated and saved by institution closure would be focused on communities for people on waiting lists, although it looks like that is not going to happen. People in **Eastmont** get very good care. The most expensive component of the service delivery system is twenty-four hour care. When children were born twenty-five years ago, they were immediately put into the institution. Today, with some support, those children stay with their families through childhood and many into adulthood. They think this is the right thing to do, but it also saves money. The budget for the next biennium for **Eastmont** would be \$4 million to serve 25 clients, with 100 staff people, at an annual cost of \$135,000 per resident. For those cared for in their own home, the average cost is \$6000 per year. Those in the Glendive institution are total care, but they can be maintained in the communities and have their needs met. Sexual perpetrators or people who are a danger to themselves and others are difficult to maintain in the community.

Sylvia Danforth, Glendive, testified she operates services in Miles City and Glendive. She praised Sylvia Hammer and **REP. RALPH LENHARDT**, and noted the difficulty of this decision. It is true people can be served in the community. They work with hundreds of families whose children are being served within the home setting. Many of these children are developing skills so they will be able to work and live in the community without going to an institution. Two years ago Eastern Montana Industries, a non-profit organization serving adults in Miles City, opened a group home in Glendive for individuals who were moved out of **Eastmont**. Two additional group homes will be developed. She felt this is the right thing to do, and the right time to do it. She urged support for the bill.

Jani McCall, Montana Association of Independent Disability Services, testified they did not want to cause harm to the people and city of Glendive. This is an important decision for disability services in the state of Montana. They ask that Glendive look at this crisis as an opportunity. At this point in time there is opportunity to continue business in that facility and sustain the economic base in Glendive. Sooner or later, the

institution will close; it is mandated federally through *Olmstead*, and has been a goal of this state for some time. People in **Eastmont** will continue to receive quality services whether or not this bill passes. If this bill does not pass, 400-600 people will lose community based services. She asked for support of the bill.

Opponents' Testimony:

REP. RALPH LENHARDT, HD 2, Glendive, declared this is an emotional issue for him. Every session, attempts have been made to close **Eastmont**, and each time they prevailed. Former **REP. JOHN JOHNSON** fought valiantly for **Eastmont**. There are only 29 residents in Glendive at **Eastmont**, but he felt the gradual decrease in numbers has been by design. He wondered why they were taking people out of **Eastmont** and transferring them to group homes, but not transferring any residents from Boulder. There are two classes of the developmentally disabled in Boulder--the violent and the non-violent. He thought there are approximately 40 non-violent developmentally disabled in Boulder. He asked why not move them to Glendive, so the facility there is full and operating more efficiently. He felt it makes sense, since they have the staff to do it. He thought it was unethical that one legislator was asked to support this bill, and from one of that person's constituents. They were told it would free up money for another program. He said it was not right to vote to close **Eastmont**. It is not right for the residents, the community, or the workers. He favored filling it to capacity, and letting the folks that run it do their job. He asked them to kill the bill.

James Deckert, Board of Commissioners, Dawson County, asked them to consider how important jobs are in Montana, and if the financial savings are worth the trauma to the residents of **Eastmont**. He disputed total care people could be placed in group homes. He observed if these people are taken out of **Eastmont**, and put into another setting, they will be ripped away from the only security they have ever known. He spoke to the economic impact on Glendive after having **Eastmont** there for 34 years, and wondered if the severance package would be adequate. He contended the superintendent of **Eastmont** would have a hard time holding her staff if this transition takes place. **Mr. Deckert** felt this action would not settle the lawsuit. **Eastmont** presently employees nearly 100 people. With the multiplier effect, there would be a \$10 million impact from the closure. It would effect the livelihood of about 400 people. Glendive has lost 23.3% of its population in the last 20 years, and by this action another 4% will be lost. He had seen studies that showed **Eastmont** was the most economical facility of it's kind in the state, and has received the highest ratings for services

provided. They have a good track record, and an exemplary staff. A legislative study in 1999 showed it is not cheaper to put people in group homes. He expressed bitterness about being the first one on the chopping block for whatever agenda is out there.

J.D. Lynch, Montana Public Employees Association, wondered if they would be there today if there was a \$250 million surplus instead of a deficit. He submitted they wouldn't, and wouldn't be rushing into this. He felt this cannibalistic tendency is worse than any other session. He submitted there are people walking the streets in Montana that supposedly are being taken care of, and aren't. He recalled when there were too many people in institutions, but there are some people that are best placed in an institution. He submitted the worst thing done in the legislature is haste. He recalled the trauma for people being moved when Warm Springs was closed. He thought the time had not come yet for the closure of **Eastmont**, and they ought not to be rushing into it.

Rae Olsen, City of Glendive, advised there was a fiscal note for **SB 35**, which deals with the criminally developmentally disabled, that would have added 53 FTE, built two buildings, and spent \$2 million a year in Boulder. The fiscal note was changed to \$25,000. **Director Gail Gray, DPHHS**, assured them there were no plans for such expansion in Boulder. She noted **Director Gray** is a person of high integrity with very sincere intentions, and believed it is her intention not to spend that money. She said the room was filled with professionals with good intentions toward this vulnerable population. She didn't impugn the exaggerated data they presented, but believed they were misinformed. She reminded them it will become the task of the department to deal with massive demands with inadequate dollars. She requested they fund the department so they can take care of all vulnerable citizens.

Harold Blattie, Montana Association of Counties, rose in support of Dawson County. He pointed out one of the major components of economic development is retention of the economic base that exists in a community. It is not right for Glendive to shoulder this proportionately large share. He pointed out the highway runs both directions, and felt the right solution was better utilization of the facility.

Bob Gilbert, representing himself, testified he lives in Sidney, but used to have a business in Glendive. When people are moved from eastern Montana to Boulder, those relatives will have a thousand mile round trip. It's all in the name of money, and has nothing to do with taking care of people in home settings. He favored raising some almighty dollars, and taking care of people.

He spent ten years in the legislature, and ten years in the lobbying business. The legislature hates to raise money, but hates not to give good service. Community Centers are taxpayer funded. He agreed with **REP. LENHART** that this is planned. Bureaucrats only have to drive 70 miles round trip to Boulder, and it is 1000 mile round trip to Glendive. {Tape: 2; Side: A} He wondered about the comparison of keeping someone in Glendive or in Boulder. The cost per person per year in Boulder in 2002 was \$133,451. The cost per person in Glendive was \$109,586. He felt **Eastmont** should be expanded, and Boulder should be closed. It would save \$2 million. He felt they are saving money by keeping **Eastmont** open. Keeping it open is good for the people there, and their relatives. He contended this is a bad bill, and he urged them to table it.

Jerry Jimison, Mayor, Glendive, advised he had spent all of his 56 years in the state of Montana. He said Montanans have always taken care of their own. He stated agreement with about 95% of the proponents testimony, and felt they have the residents of **Eastmont** in their minds and hearts. He disagreed on the closing of **Eastmont**. The last state **Supreme Court** ruling on closing institutions was in Tennessee. The judge in Tennessee refused to close them, and said they had to be open as a choice for those who could not survive in community settings. Glendive has never argued against group homes for those who can survive in them. **Eastmont** has had residents go into group homes and be forced to return because they could not survive in a group home setting. A smaller residential setting like **Eastmont** is more appropriate for those that are total care, than a large brick building that looks like an institution. If people are convinced that the need for institutions like **Eastmont** are not going to be necessary, he asked why not let the courts do it. He favored letting someone else be the bad guys, and funding **Eastmont** for two more years. The 73,896 people who live in the 17 eastern Montana counties won't be thinking the legislature is picking on eastern Montana. Closing **Eastmont** would have the same effect as closing St. Vincents Hospital would in Billings. The good people of eastern Montana have always supported the state of Montana through their natural resources of coal, oil, and gas, and someday maybe even farming again. Currently, eastern Montana is hurting more than the state overall. 23% of the population has left in the last 23 years. He asked that they kill the bill, and fund **Eastmont** for two more years as a choice for the total care and developmentally disabled residents of Montana that need that facility. He advocated making a cut somewhere else.

SEN. JOE TROPILA, SD 24, Great Falls, advised he had a phone call from a young man who went to school in Glendive, played football and baseball there, went on to college, and came back to Glendive

as a football coach. His nephew, **Russell McCarvey**, wanted to go on record as an opponent.

SEN. KEITH BALES, SD 1, Otter, advised Glendive is in his district. He acknowledged the tough times and the tough decisions that will have to be made. He was not certain closing **Eastmont** is the right decision. There was testimony about the need to do this because of pending lawsuits. He felt there were some questions about the lawsuit, and he hoped they would be asked by the committee. There were some serious questions raised about the final outcome of *Olmstead*. He contended it did not say there should be no institutions for those who cannot be in the community. Even the department is not saying everyone will go out into community settings, so the institutions will have to be maintained. He wanted the department to answer why it costs more per resident in Boulder versus **Eastmont**. It appeared to him **Eastmont** was doing every bit as good a job, or even better, for less money per individual. He referred to the mechanism in the bill for turning the facilities over to the **Department of Corrections**. That has been heralded as an opportunity for Glendive, and that is a possibility. **Eastmont** is in a residential area of Glendive, and some of those residents have very serious concerns about having a correctional facility in a neighborhood setting. He hoped those concerns could be addressed. He felt **Eastmont** has done a good job for those who can't survive in homes. The people in Glendive have been very supportive of this institution. He thought the committee should think long and hard before passing this legislation.

Informational Witnesses:

Joe Williams, Department of Corrections, advised he has known **Superintendent Sylvia Hammer** for a number of years, and there is no finer administrative superintendent or more quality staff anywhere in the state. They have proposed an alternative for **Eastmont Human Services Center** if the community wants to pursue the option. It would be a 60-day chemical dependency center for people coming from courts across the state, or from the prison. They would stay for 60 days and then transfer to a pre-release center. These would not be offenders who would be residing after their treatment in Glendive. It is roughly an eight month program. There is a model of that in Butte called Connections Corrections. They stay for 60 days, get the chemical dependency treatment they need, and are transitioned to pre-release. They feel this is a viable alternative, and will not require additional funding. This helps their department because 80% of their adult offenders need this kind of treatment. When they can't get that because classes are full in the prison, or the pre-releases are full, they stack up in the prison system and

county jails. This program can be set up anywhere across the state, but **Governor Judy Martz** was very concerned about economic opportunity for Glendive. This facility meets all of their needs, and would take minimal renovation. They will submit an RFP if the community of Glendive wants to pursue this. The only drawback is the location is already set. Normally, a community gets to pick the location.

Jeff Sturm, Superintendent, Montana Developmental Center, testified he oversees two areas of DD services. Providers do a good job for total and near-total care clients. The problems are with behaviorally challenged individuals with criminal histories and those with a dual diagnosis. **MDC** is in the process of discharging six more individuals into the last of three group homes. **MDC** population will be about 75-76 individuals. People are committed to **MDC** if they are a danger to self or others, if they are in need of total care, or near-total care. He further described the population and their needs. The nursing population is gradually leaving the facilities, and that is a nationwide trend. One of the reasons costs are higher at **MDC**, is this population takes a lot more to manage. There are psychiatrists on staff, etc., and a separate unit was created to protect clients from others. **SB 35** was a housecleaning effort to change language in the law that allowed a criminal commitment to come to **MDC**. In the past year, there were two criminal commitments, one for a commitment, and one for a court ordered evaluation. It was unclear at that time if the statutes allowed for those individuals to come to **MDC**, and the bill is strictly for clean-up. The first fiscal note was high, and they revised it. It is all guess work. They don't know what the impact of **SB 35** will be. There was one commitment in the last twenty years. Prior to the beginning of the year, they discharged 16 clients into the community in the last two years, and only one returned. As of May 1, 2003, they will have discharged 17 clients into the community and none of those have returned. Most of the clients they discharge are successfully placed in the community, and that is a credit to their staff, discharge plans, and the community caring for those very difficult clients.

Questions from Committee Members and Responses:

SEN. JON TESTER asked for someone in the department who has oversight over **Eastmont**. He asked about the testimony that the director of **Eastmont** would have a difficult time holding staff if the bill passed. He wondered about the plan if that happens.

Joe Mathews, DPHHS, advised their plan would be to start this process on July 1, 2003 and finish it by the end of December, 2003. In the meantime, they would build two group homes in

Glendive, and begin the process of transferring people to **MDC**. They anticipate staff leaving, but they don't know how many or how fast. They built in a severance plan, and are working with the **Department of Administration** about options like paying people extra money to stay longer. A core staff is needed until the facility closes. They anticipate about 13 retirements, and have built in some relocation expenses for about 10 people. There would be some opportunity for jobs at **MDC** if this happens because of the nature of the clients going there. There is six months of state health insurance built in, and an incentive package for the folks who stay longer. Coming out of the Montana Employment Protection Act, there is some money per person for retraining.

SEN. TESTER asked what happens if the staff leaves.

Mr. Mathews asked community providers for a request for proposal on how they would serve clients if they came to the community. Part of that is how they would serve these people if they weren't able to be served at **Eastmont**. Community providers could be used, or they could move the residents to **MDC** prior to them coming out into the community.

SEN. TESTER inquired if there was capacity at **MDC** to do that.

Mr. Mathews answered yes.

SEN. TESTER asked if there is cost in the fiscal note for the additional group homes.

Mr. Mathews said yes there is. They started this plan with the idea of one group home in Glendive. After talking to staff and the folks at **Eastmont**, they decided on two four-person group homes. The department provides some up-front costs to a provider if they're interested. That amount usually is about \$100,000 for them to get started buying the land and getting set up. When the individuals come into the facilities, they are receiving supplemental social security payments and that is used to pay the rent to pay providers to keep those group homes. The initial goal was one six-person group home.

SEN. TESTER wondered if that is reflected in the fiscal note.

Mr. Mathews advised it is on page 1 of the fiscal note under assumption #3.

SEN. TESTER asked if it is a general fund expenditure or state special.

Mr. Mathews indicated it was a general fund expenditure. That is part of the reason the cost is not seen as diminishing for the first year of the biennium because there are associated costs to move the people out and establish these group homes, etc.

SEN. TESTER asked **Mr. Williams** {Tape: 2; Side: B} how people are being taken care of currently.

Mr. Williams advised there is a waiting list of 75-100 for all the chemical dependency programs across the state. Currently, those getting out soonest get the program and get out. With a program like this, they could reduce the amount of inmates in the prison system.

SEN. TESTER commented about testimony this could be handled in their budget. He wondered if there are additional dollars in their budget if this isn't done.

Mr. Williams indicated the way this will work is through passage of **HB 451**, which will allow out-of-state offenders into Shelby. Shelby can get offenders in there from out of state, and not be totally reliant of the Corrections budget. That would give the department some flexibility to do these short-term treatment programs thereby lowering their costs.

SEN. TESTER asked how much this will cost.

Mr. Williams stated it would cost \$60-\$64 dollars a day. The savings is in length of stay.

SEN. TESTER said what he was asking is if the **Department of Corrections** opens this new center, how much will it cost.

Mr. Williams said it will cost roughly \$1 million a year.

CHAIRMAN TOM ZOOK asked how long is the treatment at Warm Springs for this same thing, and if it is six months.

Mr. Williams said Warm Springs is strictly for DUI, and is a six-month intensive treatment program. Once they get off that, they are on probation for up to five years. Currently, over 85% who graduate that program have maintained their drug free status in the community with no violations. They are hoping to replicate that type of program in the next couple of years.

CHAIRMAN TOM ZOOK asked how that could be equated with a sixty-day program. That is why they went to a long term program.

Mr. Williams said Warm Springs strictly deals with DUI, and this program deals with a variety of chemical dependencies. They've been in prison and may not be on fourth offense DUI. They have chemical dependencies in addition to whatever crime they've committed. There has been some great success with the Connections Corrections Program in Butte. They've had 700-800 people go through that program, and it somewhat replicates the Watch program because it's an eight-month program. Two of those months are dedicated to the chemical dependency treatment, and the following six are done in the pre-release center. It is almost the same, but not quite as intense as Warm Springs.

CHAIRMAN ZOOK asked if there are trackings on that.

Mr. Williams advised 784, or 90% of the clients, have successfully completed the program or transitional pre-release center. Only 14% did not complete the program. On six months of discharge, 92% that came out of the Connections Corrections program have remained abstinent from the use of drugs, and over the year it has been 69%. The recidivism rate is roughly 35%, which means 65% remain out of prison for three years.

SEN. ED BUTCHER expressed confusion about the cost per individual at Boulder versus Glendive. He asked about the actual number.

Mr. Mathews answered the reason is the way costs are calculated at the two residential facilities. Getting a per person cost is based on the population and the total budget, which changes all the time as people come in and out. Generally, it's more expensive to serve people at **MDC** because the intensity of the level of folks there versus the folks at **Eastmont** is significantly different--people with behavior problems and predatory behavior require a more intense staff/client ratio. When the fiscal note was done, it was before they had any more room. Eighteen people are being moved out from both facilities, and that is the reason for the difference in numbers. He added when people come into the communities, it is true that it is generally cheaper. If an individual comes out of an institution and goes into a community based study, they may need some Medicaid services such as occupational or physical therapy as part of their treatment plan. When they were in the institution, it was part of the service. It is part of Medicaid requirements for those with mental retardation. When they go to the community, it's not necessarily a requirement anymore. If they still need physical and occupational therapy, it is paid for out of the medical Medicaid budget. It looks like they are being served at a cheaper rate in the community than they really are if all the Medicaid dollars are added in. Those dollars are coming from different places.

SEN. BUTCHER advised he needed to see some cost savings or projection before voting to close a facility--a major decision in terms of economics of an area. He wondered about the cost savings to the taxpayers with this big move.

Mr. Mathews said it boils down to whether they want to have two residential facilities for people with developmentally disabilities in Montana or one. Administrative costs would be reduced. At **MDC** they are serving a population composed of total care, near total care, people with significant behavioral problems, and sexual predatory problems. At **Eastmont**, they are serving an easier population. For the first time, they have the capability at **MDC** to serve everybody with one administration. That is where the savings comes from. If the folks from **MDC** are moved to **Eastmont**, they would have the same problem. Another concern is the staff at **Eastmont** hasn't served the significantly behaviorally disabled population. Staff would have to be trained, and psychiatrists would have to be hired. They have the capability at **MDC** and that is the reason.

SEN. BUTCHER asked about keeping all the easy ones at Glendive. He asked what the administrative savings would be of moving to one institution.

Mr. Mathews indicated **Eastmont** is currently licensed for 55 beds, and there would still be the cost of having two facilities open. The goal of moving people to the community doesn't complete it. They have people they've referred to the community, but still have them in the residential facilities because it takes expansion dollars. The issue is if they could put all the people in one place, they would be better off than having two separate facilities. They can accommodate people coming into **MDC** with very little additional staff, because they have the capability to serve everybody for the first time.

SEN. BUTCHER asked if the savings would also include state administrative costs.

Mr. Mathews advised there are 52 not-for-profit corporations in Montana, and the department monitors them and the clients they serve in community based settings. Because the department uses Medicaid money in their waiver, there are requirements that need to be met. They have to be a qualified provider.

SEN. LINDA NELSON advised she had been in the legislature since 1989, and this comes up every session. She had always been in great support of **Eastmont** because it is an excellent facility. She felt most of these people would not get out into community-based settings, and it was going to be very traumatic. She

started getting calls from a group home in Plentywood, and they supported the bill. They wanted her to support it because it would help them to keep their own programs. She told them she would only support this if she really felt that was so. She asked where the calls were coming from, and she was told it was from the department. She thought that was somewhat unethical.

Mr. Mathews stated Glenwood is a community based program in Plentywood. He didn't think anything in **HB 727** would affect that facility one way or the other. He supposed it could if when they move people from Glendive or Boulder, that facility felt they could serve those clients. He had no indication that program would be interested one way or another. He didn't think it would have an impact. By and large, community providers believe the mission of the system is to do the best job possible to move people off the waiting list or for residential facilities into communities. Not every person who resides in a residential facility can or should be served in a community. That is a huge debate in the developmentally disability system nationwide. He had not personally talked to anyone at Glenwood about this one way or another.

SEN. NELSON asked about the testimony that 400-600 people would lose services if this bill doesn't pass.

Mr. Mathews indicated when they were working with this plan with the subcommittee, the subcommittee took the \$2 million out per year that it would cost to operate **Eastmont**. That money is currently out of **HB 2**. The concern is if the bill does not pass, or if **Eastmont** were to be funded, the department would be responsible for finding the \$2 million somewhere else within Developmental Disabilities Community Services. That includes group homes, supported employment, and children's services.

CHAIRMAN ZOOK said it would cost money to move people and build the houses, and he wondered where the savings are in the first year of the biennium.

Mr. Mathews advised there aren't any savings in the first year of the biennium. There is a detailed severance package, the cost for moving people into the community, etc. There would be savings in the second year and beyond.

SEN. RICK LAIBLE asked how many FTE's are at Boulder.

Mr. Mathews advised there are about 325.

SEN. LAIBLE asked about the capacity and the amount of patients that can be served.

Mr. Mathews advised they are licensed for 100 beds, and there area about 75 patients currently.

SEN. LAIBLE asked about the cross section of the patients that are served at Boulder and Warm Springs and if there are children.

Mr. Mathews said Warms Springs is not in his division. There are no children in institutions in the developmental disabilities system. Children are served either living with their families or in community homes across the state. The population at Boulder runs from age 20 up to 70, and is both males and females. At Warm Springs, people are committed with significant mental illness. The courts commit someone to **MDC** or **Eastmont** for posing a danger to self or others, or if in such need of care a structured environment is needed.

SEN. LAIBLE expressed concern about families of those at **Eastmont**. He asked how many patients at Boulder will go back to the community, and if is there a plan to build more community based facilities for those from eastern Montana.

Mr. Mathews advised the system is designed so that most of the people who are in both **Eastmont** and Boulder don't have families. Some do, and they always try to look at the best possible placement. Over 20 of the people currently residing at **Eastmont**, used to be at Boulder, and many don't have families. People have some choices when they come out into the community.

SEN. LAIBLE asked if community based homes are resident or outpatient facilities.

Mr. Mathews said they have four-person and six-person group homes. Generally, they're staffed for 24 hours. There is less staff during the day, because many residents attend day programs or work.

SEN. TRUDY SCHMIDT asked for a comparison of closing **Eastmont**, and if they are building two group homes.

Mr. Mathews indicated when they started this plan, it was for one six-person group home. Since that time, it has been determined there are some folks who would be better served in Glendive, so they decided on two four-person group homes.

SEN. SCHMIDT asked about the \$100,000 in the fiscal note.

Mr. Mathews advised that is the department's cost; the provider gets a loan and does all the rest. When folks are moved in, it's

almost like paying rent. People get supplemental security income, and a good portion of that is used to pay rent.

SEN. SCHMIDT asked about Medicare or Medicaid insurance for those at **Eastmont** and if it is the same in group homes.

Mr. Mathews advised it is the same thing, although when people come to the community, they go into the Medicaid waiver program. The funding formula and the matching splits are the same, but it is different Medicaid.

SEN. SCHMIDT asked about the difference in the number of staff at **Eastmont** and how many would be needed in the two group homes.

{Tape: 3; Side: A}

Mr. Mathews said 15-20 staff are needed in a group home, and providers decide on staffing levels with oversight from the department.

SEN. SCHMIDT asked how many people the two group homes would need.

Mr. Mathews said it is about a two to one staff/client ratio. It would be about 20-25.

SEN. SCHMIDT asked how many people were currently employed at **Eastmont**.

Mr. Mathews advised it is about 97.

SEN. SCHMIDT asked **Mr. Williams** if money for the private prison goes into special revenue or general fund.

Mr. Williams advised the private prison is paid with general fund. One of the savings is currently the department pays county jails for holding offenders.

SEN. SCHMIDT asked if they open the treatment center in Glendive, if that will be general fund. **Mr. Williams** advised yes.

SEN. SCHMIDT asked **Mayor Jimison** about the acceptance of the treatment program.

Mayor Jimison advised they have tried to avoid talking about that in an attempt to keep **Eastmont** fully funded and used for what it was built for. Through newspaper leaks and talk in a small community, that talk has surfaced. Opposition has been raised in

the immediate residential areas surrounding **Eastmont**. One of the opponents of closing **Eastmont** said whatever the committee chooses to do, Glendive would work hard with the **Department of Corrections** to help implement this program in Glendive, although maybe not in that facility. They agree with **Mr. Williams** that it is a very necessary program, and eastern Montana deserves one.

SEN. BALES asked **Mr. Mathews** to explain how the populations are separated at Boulder.

Mr. Mathews advised over the years, the populations have evolved into the groups talked about before. One of the big concerns at **MDC** and in community settings is health and safety. At **MDC** they segregate their populations.

SEN. BALES asked about moving people from **Eastmont**, and if there are sufficient facilities open at Boulder to keep them segregated.

Mr. Mathews said that is the big question they looked at when they made this plan. He said yes, they believe they have.

SEN. BALES asked if they are going to open up a wing or cottage, and if that is going to cost money. He wondered if that is taken care of in the fiscal note.

Mr. Mathews indicated the folks being brought in would be placed in a wing, and that is covered in the fiscal note.

SEN. BALES asked about staff leaving prematurely.

Sylvia Hammer, Superintendent, Eastmont Human Services Center, responded that is one of her great concerns; if half the staff leaves, she is not sure what they would do. She didn't know if it meant they would have to move people to **MDC** prematurely. They would have to provide a place for those moving into the group homes in Glendive. She thought it would be a bad move to move them first to **MDC** and then back to Glendive. She thought it sounds like there may be a plan, but if the staff quits prematurely, there would be a real problem. She felt the incentive money in the budget is not apt to retain the staff. In order to carry out the closure of the facility and take care of those residents until the day they leave, they need the experienced staff there and need to pay them enough money so they can afford to stay until the last resident leaves. The resident's welfare is foremost in their minds.

SEN. TROPILA conveyed to **Mr. Mathews** that "adequate" housing is not sufficient for vulnerable people.

Mr. Mathews apologized for the use of the word. He believed they could take very good care of these folks, and didn't see that as a problem. It is always disconcerting when moving people with developmental disabilities from one place to another. He expressed confidence in the staff at **MDC**, they have room for these folks, and many of them are people this staff has served before at **MDC**.

SEN. TROPILA asked how close they would be to the predatory population.

Mr. Mathews said they are on the same campus, but are completely removed in a separate building.

SEN. BUTCHER asked about the four person group homes, and if there are contingencies to expand those to six.

Mr. Mathews advised no. If more people came from residential facilities to communities across the state, there are places they could go. There are folks living in group homes currently, that don't necessarily need the level of service the group home provides; they could be in a supported living arrangement.

SEN. BUTCHER asked what happens if the 110 beds at Boulder are exceeded.

Mr. Mathews said they have looked at that question, and believe if somebody comes in, they can move somebody out. They have created a way in the disability system so when they go out they can take the money to the community with them. They have a number of people already referred to the community for placement. Their hope is to downsize **MDC** even more. If by chance they went up to 110, there are other possibilities on the campus at Boulder to move into. They don't anticipate that happening.

SEN. SCHMIDT asked **Superintendent Hammer** about her comment regarding the incentive. She asked what would be appropriate to keep staff there, and wondered if the department has been cooperative.

Ms. Hammer advised the department based the figure in the budget at \$5000 per staff person. She asked someone in the private sector what would be reasonable for an incentive pay, and was told between three to six months salary would be reasonable. The amount of money in there currently would not pay any employees that amount of money. There would need to be union negotiations to determine the amount paid to each individual. Her concern was when jobs come up, staff will have to take them. She advised she needs her experienced staff.

CHAIRMAN ZOOK asked if this is such a good efficiency measure, he wanted to know why it wasn't proposed to the Executive branch early in the budget process.

John Chappuis, DPHHS, advised the subcommittee prompted the department on this. At the time it came up, it was not something they thought they would put into the budget. The need for the savings caused them to look at it more closely.

CHAIRMAN ZOOK wondered how many other things didn't get scrutiny. He expressed concern about the difference in costs of Boulder versus **Eastmont**.

Closing by Sponsor:

REP. CLARK closed on the bill. She stated the **Human Services Subcommittee** had very difficult choices. The choice was how to use limited dollars efficiently and effectively to serve as many people as they could. The choice was to preserve a balance between financial and human aspects.

- Recess 10:16 a.m. -
- Reconvene 10: 36 a.m. -

Motion: **SEN. BOB KEENAN** moved that HB 363 BE CONCURRED IN.

Motion: **SEN. KEENAN** moved that HB036302.AGP BE ADOPTED.

EXHIBIT(fcs77a03)

SEN. KEENAN advised the amendment transfers \$30 million from the old fund that will be replaced in the second year of the biennium by a tobacco products and cigarette tax.

Director Chuck Swysgood, Office of Budget and Program Planning, explained the amendment takes \$30 million from the old fund reserves in FY 04 into the general fund. Those reserves are there to pay claims prior to July 1, 1990. The \$30 million is part of the revenue necessary to fill the hole in the 2004 biennium. There is roughly \$99 million in reserves in the old fund, and the projected claims for the next biennium are around \$29 million. The \$30 million is backfilled in 2005 with the cigarette tax if one is passed. The way the law reads, as it relates to the old fund, is the general fund is liable for the cost of those claims in the event the revenues are not available in the old fund. They felt comfortable with taking \$30 million one-time and still leaving enough reserves.

SEN. COBB asked what amount of cigarette tax would be needed.

Director Swysgood said in **HB 407** it is 70 cents.

SEN. COBB asked if that will raise about \$25 million more, or if they would be short.

Director Swysgood explained the way that bill is constructed with the delay of the income tax and capital gains tax relief, the cigarette tax will generate roughly \$45 million in 2003 and 2004 to fund the shortfall in 2004. Along with the \$30 million, it is close to \$75 million.

SEN. COBB asked how these bills fit together.

Director Swysgood indicated they have advocated all through this process to get spending back to the Governor's budget. The way **HB 2** sits in conference committee, some of the agencies that were below the Governor's budget were funded contingent on the passage and approval of **HB 407**. The three biggest agencies are Human Services, which was running \$28 million below the Governor's budget, Corrections at \$4.6 million below, and Higher Education at \$5.5 million below. There are still agencies below the Governor's budget, but those are the only ones addressed in **HB 407**. The hole, based on the Governor's budget is in 2004. That is because of declining revenues in 2003 and some in 2004. In the Governor's budget, there is a \$50 million ending fund balance predicated on the use of the coal trust to fill the hole in 2004. Expenditures and revenues match in 2005.

SEN. COBB asked if there is enough cigarette tax for the \$38 million plus paying work comp back.

Director Swysgood advised if they went back to the Executive budget *{Tape: 3; Side: B}* and the hole is filled in 2004, the expenditures in 2005 match the projected revenues. The question is in 2007. If this is not paid back to the old fund, the general fund is laible. The claims decrease over the years, and the liability goes away.

SEN. COBB said there has to be a plan written down somewhere, and he wondered if the legislature could request it as a public document.

Director Swysgood advised he had no plan written down, but he knows what the hole is. There are two vehicles to fill that hole--**HB 407** and **HB 363**.

SEN. COBB said **HB 407** contains the cigarette tax, plus the tax cut.

Director Swysgood advised it came out of the **House Taxation Committee** about the same way it came out of the Senate, with the exception that they lowered the accommodation tax from 5% down to 3%, and the rental car tax from 9% down to 4%. They put a little money in for the veteran's home. They left the cigarette tax and the mechanisms it funded alone.

SEN. EMILY STONINGTON stated the flux is in the ending fund balance, and asked if **Director Swysgood** is still shooting for the \$50 million.

Director Swysgood advised they would like to see a \$50 million ending fund balance. The revenue estimates had been lowered in **Senate Taxation Committee** that morning for FY 2003 by \$12 million. There is other legislation that generates revenue for 2004, and they would have to wait and see what happens. He contended if they get much below \$50 million given the uncertainties of the revenue picture, there could be implications for not being able to take care of revenue ups and downs.

CHAIRMAN ZOOK advised he was trying to keep him from coming back in haying season, because surely they're going to have hay this year.

SEN. STONINGTON asked if the goal was still to fund the budget to the current level that is in **HB 2**.

Director Swysgood said their goal has been to at least get back to the Executive budget. They don't feel spending can go over the Executive without additional revenue. He wasn't sure they could get all agencies back to the Executive budget. He felt they addressed the most critical, Human Services, Corrections, and Higher Education, in **HB 407**.

SEN. COBB asked if the \$17 million tax cut is still in the Governor's budget.

Director Swysgood stated the Governor's tax reform package contained a decrease in the income tax marginal rate and the capital gains rate. That has been altered through the process. The mechanisms are still in place, but the implementation of the tax cut has been delayed one year.

SEN. KEENAN advised the 3/4 vote on **HB 2** can fund above the Governor's budget.

Vote: Motion carried 18-1 with **COBB** voting no.

Vote: Motion that HB 363 BE CONCURRED IN AS AMENDED carried 18-1 with COBB voting no.

HEARING ON HB 705

Sponsor: EDITH CLARK, HD 88, Sweetgrass

Proponents: Rose Hughes, Executive Director, Montana Health Care Association
Ray Hoffman, Peak Medical Corporation
H. Ray Gibbons, Teton Medical Center
Bob Olson, Montana Hospital Association
Pat Callbeck Harper, AARP
Steve Yeakel, Montana Council for Maternal and Child Health

Opponents: None

Opening Statement by Sponsor:

EDITH CLARK, HD 88, Sweetgrass, opened on HB 705, a bill to increase the utilization fee on nursing facility bed days. The current fee is \$2.80, and this goes to the general fund. The bill will increase the fee by \$1.70 in 2004, and another \$.70 in 2005. The increases will go to a state special fund to fund the \$1 back to these facilities. Medicaid fees are \$15 below the cost of daily care, and 60% of nursing home patients are Medicaid eligible. Medicare payments, which previously helped fill the gap, will be down by \$30 a day. These dollars will bring the facilities to the point that they are about \$3 a day below their actual costs. The rising costs to nursing homes are many and varied. Health care worker shortages cause increased costs, and they have a higher temporary traveling staff. New federal privacy and safety regulations caused a lot of infrastructure cost. Liability and health care insurance are very costly. The original purpose of the purpose of the fee was to relieve privately paying individuals in nursing homes from the burden of cost shifting from the Medicaid program, and for maximizing federal funding. This fee increase and receiving more federal matching funds by using the intergovernmental transfer for all 97 nursing homes means that these facilities won't have to cut services or close, and can continue to provide quality care.

Proponents' Testimony:

Rose Hughes, Executive Director, Montana Health Care Association, read from written testimony, and submitted additional information. **EXHIBIT(fcs77a04)**

Ray Hoffman, Peak Medical Corporation, advised they operate over 700 long term care and assisted living beds, and from their perspective this is a good bill. If long term care had to go for the next two years with no increases, there would be closures. A long term care facility closed in Whitefish because of a \$1 million loss per year dealing with indigent care. **Peak Medical Corporation** believes indigent care is the responsibility of the state, but they also realize Montana and other states are facing severe financial shortages. They feel the bill is a solution.

H. Ray Gibbons, Teton Medical Center, testified he is the administrator of a facility in Choteau. Teton County is a low population density county, with low per capita income. They have 39 nursing home beds, and 34 are full. They receive some county tax support. 70% of their facility population is Medicaid. They compete with Great Falls for staff and patients. Currently, they have a net operating loss of \$66,000 on a \$3 million base operation. The bed tax increase in the bill would bring about \$47,000 to the facility. The net operating loss per day would go from \$11 per day to \$3 per day. The bill would help with long term planning. In March, their medical malpractice premium rate was increased from \$25,000 to \$92,000. The local bank gave him a loan, and he filed a complaint with the Insurance Commissioner's office that the company failed to give 30 days notice. Another carrier is going to cover them for \$53,000. He must now come up with a way to cover another \$2300 a month in costs. He can get to the next fiscal year if **HB 705** is implemented.

Bob Olson, Montana Hospital Association, advised 50 nursing homes are members of the association. In the rural communities of Montana, the nursing homes are in extremely fragile fiscal condition. The nursing home in Big Timber has already posted a year to date loss of around \$400,000. The nursing home in Superior has posted a year to date loss of over \$300,000. There are fewer people residing in nursing homes. More seniors are opting for assisted living, etc. Facilities are locked into a heavily regulated environment with a declining patient base. The bill is crucial to their members.

Pat Callbeck Harper, AARP, read from written testimony as a proponent of **HB 705. EXHIBIT(fcs77a05)**

{Tape: 4; Side: A}

Steve Yeakel, Montana Council for Maternal and Child Health, spoke on behalf of the programs within the Prevention and Stabilization fund. He testified he is a former budget director, and asked for support of the bill.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. JOHN ESP conveyed to **Mr. Olson** they met with the **Hospital Association** several times about a measure they were supporting to take \$9 million out of the Medicaid match that would have an adverse effect on facilities across Montana. Now they were trying to figure ways to levy more funds for an increase in provider rates. He said losing the facility in Big Timber would make a big difference in the town. When the state tries to do too much with too little money, critical needs are not taken care of. He said he would support the bill, but felt they need to draw lines and fund things that are important to all of Montana.

Mr. Olson stated appreciation for the commitment of **SEN. ESP**, especially dealing with tobacco prevention and sorting out priorities within the state budget. He advised **MHA** support for I-146 to use more funds for tobacco prevention was difficult, knowing it might mean limited resources for human services. At the time, the state ending fund balance was being reported in far better shape. He didn't disagree with **SEN. ESP** on funding human services versus prevention. The concern of **MHA** is human services have been reduced a number of times, and hospitals have been in the middle of that reduction for the past two and one-half years. They have received reductions of over \$17 million in hospital payments in the last two years. He had no argument about the things **SEN. ESP** wanted to do with the prevention funds.

SEN. ESP said if they take care of the things that are in place and don't create new programs, there is a chance of getting ahead of the curve. If they continue to create new programs, it will be hard to catch up. He asked if the hospital in Big Timber knows about the policy that **Mr. Gibbons** found that is \$53,000 instead of \$92,000.

Mr. Olson advised the association and the **Montana Health Network** are both looking at captive insurers. They have been working with particular carriers to bring coverage to the members and to the nursing homes. Big Timber would know about this, but he didn't know if the facility would be in the underwriting cycle at a point to make a switch.

SEN. TROPILA asked about seniors not utilizing nursing homes, and asked if it is because costs are too high, etc.

Mr. Olson advised seniors have good options, and seniors are healthier. When seniors begin to experience limitations in their ability to take care of themselves alone, they get home health

care, waiver services, and assisted living. The reason nursing facilities have continued to experience the cost spiral, is that persons residing in nursing homes are far more acutely ill than ten years ago. That translates into higher costs.

SEN. BALES asked what percentage of people in nursing homes are on Medicaid and how many are paying their own way.

Ms. Hughes indicated about 62% are on Medicaid, and an additional 6% - 10% are Medicare. The others are private pay.

SEN. BALES said 72% are Medicare or Medicaid. He asked what affect increasing these fees will have on those paying their own way.

Ms. Hughes said costs will not increase as much as if they were paying this large cost shift in addition to dealing with other cost increases such as liability insurance. They strongly believe private pay consumers benefit if Medicaid is paying the cost it should pay. It is less expensive for this fee to be part of their cost of doing business than for the entire Medicaid shift to be pushed over on them.

CHAIRMAN ZOOK asked if it was correct that this particular bill will not shift any costs to those paying their own way.

Ms. Hughes clarified this bill says the charge won't appear on their statement. She said a fee like this can't be said not to be part of the cost of doing business. If it is part of the cost of doing business, it is figured into the rate that gets charged. Currently, the rate that gets charged includes the huge cost shift. If the cost shift can be reduced, the rate that gets charged will still be better than it would otherwise be. If they weren't paying the fee they are paying now, their cost would be \$2.80 less per patient day. That doesn't mean that a person paying privately would pay \$2.80 less for that care, because of the Medicaid cost shift.

SEN. LAIBLE asked where the money comes for the intergovernmental transfer.

Ms. Hughes advised the inter-government transfers and this fee are two separate mechanisms. The money that is inter-government transfers comes from counties. The county writes a check to the state, and the state sends money back to that county that includes the federal match, except the county isn't seeing all of that money come back to them. Some of that money is being used to fund non-county nursing homes. In **HB 2**, \$1.4 million per year of that money is being used to fund other programs.

SEN. LAIBLE asked who pays this fee.

Ms. Hughes advised the fee is paid by the facility out of their general operating revenues on a quarterly basis to the **Department of Revenue**. They see the money come back to them through their Medicaid rate, and it brings the match with it.

Closing by Sponsor:

REP. CLARK closed on the bill. There is no cost to the general fund. It would be \$30 million the state won't have to fund.

HEARING ON HB 743

Sponsor: EDITH CLARK, HD 88, Sweetgrass

Proponents: Chuck Hunter, Administrator Office of Program Finance, DPHHS
Steve Yeakel, Montana Council for Maternal and Child Health

Opponents: None

Opening Statement by Sponsor:

EDITH CLARK, HD 88, Sweetgrass, opened on **HB 743**, which proposes including the Montana Mental Health Nursing Care Center in the nursing home bed utilization fee. By bringing this facility into the program, new revenue can be realized at no new cost to the general fund. The general fund appropriation will be restored through a Medicaid reimbursement and a transfer of a portion of the fee paid to the **Department of Revenue**. This will not affect the number of dollars expended on patient care.

Proponents' Testimony:

Chuck Hunter, Administrator Office of Program Finance, DPHHS, said his unit is known as the refinancing unit that was created during the special session. Their job is to maximize the use of federal funds in the department, and to create general fund savings where possible. The purpose of this bill is to raise revenue. He submitted and explained a handout.

EXHIBIT (fcs77a06) {Tape: 4; Side: A; Approx. Time Counter: 18.9 - 22.8}

Steve Yeakel, Montana Council for Maternal and Child Health, asked for support for the bill and the programs in the Prevention and Stabilization fund.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. LAIBLE wanted to know if there is a limit to how much money they can get from the federal government for this kind of program.

Mr. Hunter advised there is a limit. The federal regulations say if they are going to use tax revenue to match in this way, on a utilization fee basis, it can be no more than 6% of the revenue of the facility. If they want to raise taxes and match it with federal Medicaid money, it can be done as much as they want so long as it is spent on Medicaid.

SEN. BALES asked about the closure of **Eastmont** and it's effect on the bill that's coming in.

Mr. Hunter advised it will effect the amount of revenue that can be generated. **Eastmont** and **MDC** are currently structured in 2003. They have a budget divided by the number of residents that would yield \$2.4 million. If **Eastmont** is closed, **MDC** will grow somewhat larger. Their yield will be bigger, but **Eastmont's** will go away. When they talk about **HB 722**, they will bring a proposal that will show both what they expect with both facilities open and if they close **Eastmont**.

Closing by Sponsor:

REP. CLARK closed on the bill. She said this will be new revenue that does not increase taxes on Montanans.

- Recess 11:40 -
- Reconvene 4:16 -

HEARING ON SB 491

Sponsor: SEN. EMILY STONINGTON, SD 15, Bozeman

Proponents: Andy Poole, Department of Commerce
John Youngberg, Board of Research and
Commercialization

Opponents: None

Opening Statement by Sponsor:

SEN. EMILY STONINGTON, SD 15, Bozeman, advised the bill is a committee bill requested by the committee and is a statutory change based on amendments to **HB 2**. It authorizes the use of the grant money for the payment of administrative costs.

Proponents' Testimony:

Andy Poole, Department of Commerce, advised they support **SB 491**.

John Youngberg, Board of Research and Commercialization, said they feel this move is in the best interest of the program and of Montana.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. ROYAL JOHNSON asked for an explanation for two additional FTE's.

SEN. STONINGTON advised there were two FTE's that were working for the Board. In the Executive budget, the plan was to phase out the entire program leaving one FTE in the budget to administer grants already in process. When **SEN. DALE MAHLUM'S SB 115** passed, the continuation of the statutory appropriation for the research and commercialization through the year 2010 was authorized. This bill continues the full staffing of two people to run the board for the grants program.

SEN. JOHNSON asked if they always had one FTE.

SEN. STONINGTON explained they had two and were going to cut it back to one because they were going to cut the program. The program is being continued, so they need the two.

SEN. JOHNSON asked if there are results on the commercialization investments they've made.

Mr. Poole advised the board has had three grant funding cycles, and have funded 43 projects for a total of \$10.87 million--\$15.8 million in matching funds and \$30 million funding from other sources. 26% of the funds has been used for production agriculture research and development. \$3.8 million has been used for IBS-CORE match. **{Tape: 4; Side: B}** He submitted a handout to the committee. **EXHIBIT (fcs77a07)** The Executive Director of the Board said there are several agricultural products now being sold in the marketplace. He gave examples to the committee.

SEN. JOHNSON asked how Montana shares in those sales.

Mr. Poole advised the Research and Commercialization statute as passed by the Legislature did not contemplate the Board taking an equity or ownership position in the research that was funded.

SEN. JOHNSON asked about follow-up.

Mr. Poole indicated when a grant is made by the Board, they develop a contract with the entity that's receiving the grant funding. That contract outlines steps and benchmarks that are monitored over the course of several years. Of the 43 contracts, 39 are still being monitored.

SEN. JOHNSON asked how they get out from under the contract.

Mr. Poole indicated by achieving their objectives in terms of match, and completing their research.

CHAIRMAN ZOOK asked **Director Swysgood** about elimination of the program and the positive \$3.65 million general fund per year. This shows an \$88,000 positive impact to the general fund in each year of the biennium. He asked if this is a big setback by passing **SEN. MAHLUM'S** bill.

Director Swysgood advised the positive \$3.65 million they had used in the Executive budget proposal was based upon **HB 177** to stop the program in the next biennium. He assumed the \$88,000 positive general fund was due to the employees being paid out of the fund itself.

Closing by Sponsor:

SEN. STONINGTON closed on the bill. She advised she is a strong supporter of research and commercialization. She was pleased to see it extended to 2010. This bill reflects that the administrative cost will be paid out of the research money. She mentioned **John Youngberg** brought their malting plant to Sidney because of research and commercialization projects on malt and barley that were going on in Sidney under this program. If that is the kind of economic spin-off they can get from research, she thought it is a very positive for the state. Because they have designated this as research and commercialization, every grant proposal has to have a commercialization plan.

EXECUTIVE ACTION ON HB 360

Motion: **SEN. TESTER** moved that HB 360 BE CONCURRED IN.

Discussion:

SEN. NELSON advised she had an amendment for the bill if it appears the bill is going anywhere.

SEN. BALES declared he didn't like the bill at all because he thought it would have extreme unintended consequences. It was designed to free up some employees in the general fund. It would severely cripple some agencies. In the **Department of Agriculture**, which has no general fund money, half of the state brand inspectors in the state would be eligible. That would be a severe drain on the department. He thought that would also be true in the **Highway Department**, and other departments that have state special revenue would be adversely affected.

Substitute Motion: **SEN. BALES** made a substitute motion that **HB 360 BE INDEFINITELY POSTPONED.**

Discussion:

SEN. MIKE COONEY said this is a tough issue for him, having been the director of an agency for a number of years. It was always painful when an employee was lost to retirement. He heard from many state employees who expressed interest in the bill and felt it is probably the fairest and most humane way to reduce the workforce in the state. In support of those he has to represent, and out of respect for good workers who contribute to the state of Montana, he urged the committee to defeat the motion and revert to the original motion to pass the bill.

SEN. GREG BARKUS advised he is philosophically opposed to retirement buyouts. With the huge discrepancy in the two fiscal notes, there are a lot of unanswered questions and he didn't know if they could afford it.

CHAIRMAN ZOOK commented they would lose a lot of good people.

Vote: Motion carried 14-5 with **COONEY, MCCARTHY, SHEA, TESTER,** and **TROPILA** voting no.

EXECUTIVE ACTION ON SB 491

Motion/Vote: **SEN. STONINGTON** moved that **SB 491 DO PASS.** Motion carried unanimously.

EXECUTIVE ACTION ON HB 13

Motion/Vote: **SEN. TASH** moved that **HB001301.atp BE ADOPTED.** Motion carried 18-1 with **COONEY** voting no. **EXHIBIT**(fcs77a08)

SEN. BARKUS asked **Director Swysgood** about the effect of the amendment.

Director Swysgood advised the amendment generates money to cover the reserve balance for health insurance costs. They are below the level of reserves necessary for actuary soundness. If this amendment doesn't pass, the only other option is to put \$6 million general fund money in this over the biennium, or make the agencies absorb this in their budget with 1/2 vacancy savings. If none of those things are done, the benefits would have to be adjusted to make the reserves available. That is money out of the employees pockets, if their deductible is increased or service decreased. This is the employers contribution to the reserve. There will be some adjustments to the health insurance plan even with the amendment to get the reserves up to \$10 million or \$12 million.

Motion: **SEN. TASH** moved that HB 13 BE CONCURRED IN AS AMENDED.

Discussion:

SEN. BEA MCCARTHY asked if the employees premium was raised four or five months before because this was falling behind.

John McEwen, State Personnel Division, advised yes. For the current plan year of 2003, they set the premium rates in August of 2002. The employer contribution went up \$41 per month. They raised the dependent premium about \$50 on average per month.

SEN. MCCARTHY asked if those go into a different account than the Director was talking about.

Mr. McEwen said the employer and employee contributions go into the same pot of money.

SEN. MCCARTHY stated on top of what they raised, it still is behind this amount. **Mr. McEwen** replied yes.

CHAIRMAN ZOOK asked him to repeat the figures.

Mr. McEwen advised the employer's share for the current year changed to \$41, and that was part of the pay bill last session. In addition, the average is \$50 from the employee.

Vote: Motion carried unanimously.

SEN. MCCARTHY will carry the bill on the floor.

EXECUTIVE ACTION ON HB 42

Motion: SEN. TASH moved that HB 42 BE CONCURRED IN.

Discussion:

SEN. STONINGTON reminded the committee the bill requires the **Department of Fish, Wildlife, and Parks** to manage wildlife for sustainable populations. It gives them several tools with which to do that.

Motion: SEN. STONINGTON moved that HB004201.AKL BE ADOPTED.
EXHIBIT (fcs77a09)

SEN. COREY STAPLETON asked SEN. BARKUS about amendments to the bill.

SEN. BARKUS recalled this amendment has to do with taking out the non-resident tags.

SEN. STAPLETON thought they should support whatever SEN. STONINGTON and SEN. BARKUS advise.

SEN. STONINGTON said there are three issues, and they needed to go through them separately. She wanted to segregate #3, as it is a separate issue from the non-resident licenses. Numbers 1, 2, 4, 5, and 6, have to do with non-resident licenses and the fact this bill takes the cap off the trophy B-10 and B-11 licenses. Those were never intended as a management tool. She thought that was an issue on which there was consensus.

Vote: Motion carried 18-1 with NELSON voting no.

Motion: SEN. STONINGTON moved that HB004202.AKL BE ADOPTED.

SEN. STONINGTON advised another tool in the bill was to allow this to be done through statutory appropriation. The legislature would no longer have this come under view. This would be diverted money that would be statutorily appropriated for this purpose. She asked **Taryn Purdy, Legislative Fiscal Division**, about the implications.

Ms. Purdy advised with statutory appropriations, the legislature does not review the expenditures or the source of the revenue every two years as a matter of course. They need to look at the law that underpins this, and determine whether or not they want the law to continue. They cannot reduce those expenditures. In the past, the legislature has expressed some concern about the degree of statutory appropriations in the state, and had the **Legislative Finance Committee** look at every single one for

several sessions in a row to determine whether or not they meet certain principles. Among those principles are there is no idea how much money is going in or out.

Discussion:

SEN. TASH spoke against the amendment. He felt for the bill to be effective, the money needs to be allocated so the department can move when populations exceed their habitat limits. That is why it becomes an issue with landowners that are supporting the wildlife with haystacks and pasture. The purpose of the bill is for the department to manage wildlife on a sustainable basis.

{Tape: 5; Side: A}

SEN. STONINGTON advised the way the bill is written, on top of page three in new section four, there is no amount of money listed in the statutory appropriation. It is wide open that they can use whatever they think they need to use out of the general license account for the purposes of this bill. The department is being given a blank check.

CHAIRMAN ZOOK thought she was correct. The intent is there would not be any excuse there were not enough funds to accomplish the task.

Vote: Motion carried 10-9.

SEN. STONINGTON advised on page 2, line 25-28, there is a drop dead date. The bill says by the year 2008, the department will have managed for sustainable populations. She wanted the department to speak to the issue. They would be managing wildlife on private and public lands, in years of drought, in years of lots of rain and grass, and with a varied constituency. She did not oppose the goal of managing for sustainable populations, but a drop dead date is a difficult situation for the department.

Bob Lane, Department Attorney, commented they are in agreement with **SEN. STONINGTON**. They believe they are already managing for sustainable populations. The section the amendment is proposing to delete on page 2, lines 26 and 27, gives the department a problem. They fear circumstances such as sustained drought and mild winters, where game populations are up, such as the current situation. Some landowners do not allow hunting, and the tools aren't adequate for the department to comply with this mandate. Circumstances beyond their control could leave them the choice of arguing about the numbers, not do this because they can't, or they can send employees out to cut down the numbers.

SEN. TASH said he would resist the amendment. He thought the date is more than generous--January 1, 2009. There have been problems in his area with wildlife populations exceeding their habitat limits considerably. It is compromising business. In 1986-89, they had a difficult time trying to defend their public land grazing permit. They tried repeatedly to get the department to observe the expanding elk herds. He felt this tool is essential currently, especially because of drought conditions. There is no feed at the lower elevations.

SEN. BUTCHER thought the amendment should be killed. There needs to be accountability in this department. The department had unlimited money and resources. They are being given six years, and he felt a time line is necessary.

SEN. BALES spoke against the amendment, and thought much of what **SEN. TASH** and **SEN. BUTCHER** said is true. The comment from the department was about unforeseen circumstances. Living with agriculture involves unforeseen circumstances. They do what needs to be done to make it work while trying not to abuse the system or the land. Often, the department has not taken that same responsibility. The bill is trying to give them the tools to manage wildlife, and makes them responsible for the land. He felt the department had often left it to the landowners and others. They should be managing wildlife in tough times and good times. If the amendment is put on the bill, the department has an excuse. He felt accountability and a date is needed.

SEN. BARKUS said he was curious as to what the remedies are. If antelope numbers, because of good winters, are out of proportion on January 1, 2009, he wondered what the department could do. He was unsure about an absolute date.

SEN. TESTER asked about the impact fee hunting has on the ability of the department to manage game.

Chris Mathews, Fish, Wildlife, and Parks, advised fee hunting and the limited opportunities to get hunters access to elk is one of the key problems in terms of their ability to meet the bill. The ability of the department to get the harvest is why these elk populations are high. It is not because the department doesn't care about the impact the elk are having on private lands. Their harvest objectives have not been met in many cases, because the hunting public has not been able to gain access to those elk during times when the season is open. It has been aggravated in the last few years, because of warm, late falls. Elk were difficult to get to. They are doing more things to kill more elk, but access is a problem.

SEN. BUTCHER didn't think it takes a rocket scientist to manage these animals. All they have to do is set up some special seasons. If antelope numbers are large, they should open up all the permits. If the animals are on a closed area, he felt the elk would harm that landowner's property. When the elk come down, special permit hunts could be held. If there are elk in January, it could be opened up to anyone who didn't get their elk permit. He didn't think this is a problem, and maybe they ought to get somebody else managing the program.

SEN. TASH understood the frustrations of the department. It's not how many permits are issued, it's how many elk are harvested. He carried a bill that allowed for a second bull elk to be taken in areas where there are so many. The remedies are access and incentives for landowners to encourage hunting. He favored the specific date. Absentee landowners could be offered an incentive to enter into block management programs. He felt the purpose of **REP. DEBBY BARRETT'S** bill is to provide this kind of solution.

CHAIRMAN ZOOK added the duties of the department is supposed to manage game so they don't end up getting listed. There are no management tools for overpopulation. He felt if this is taken out of the bill, it might as well be killed. There would be nothing left that is meaningful. It would destroy any impetus to address concerns of people that have to make a living off this land. These are the sorts of things that create problems between hunters and ranchers. It is against the law for landowners to control these animals themselves. Animals are allowed to destroy crops and eat the grass.

SEN. STONINGTON acknowledged sympathy for the problems wildlife causes for private landowners, but felt a drop dead date is unrealistic. In the Devils Kitchen situation, there are a group of large ranches, all of which are part of block management except for one. That one ranch does private outfitting. All the cow elk go onto that ranch during hunting season. The people hunting there all want the trophy bulls. As soon as hunting season is over, the cows go back to the other ranches. She didn't know what sustainable means in that instance. She didn't know how to get people to harvest the elk at the time they are there. She said she likes the bill except for this remaining issue. It says to the department that 70 years ago, the populations were low. People wanted more animals to hunt and the department to promote wildlife. It has been a great success, and is now a huge problem for private landowners. They need a bill like this. She thought the date is unrealistic. If the drop dead is taken out, it is a good bill. There are goals for sustainability and the tools to do it.

Vote: Motion failed 4-14 with COBB, COONEY, SCHMIDT, and STONINGTON voting aye.

Motion/Vote: SEN. TASH moved that HB 42 BE CONCURRED IN AS AMENDED. Motion carried 17-1 with SCHMIDT voting no.

ADJOURNMENT

Adjournment: 5:20 P.M.

SEN. TOM ZOOK, Chairman

PRUDENCE GILDROY, Secretary

TZ/PG

EXHIBIT (fcs77aad)